



9111-14

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) plans to conduct the Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test, a National Customs Automation Program (NCAP) test concerning ACE export manifest capability. The ACE Export Manifest for Rail Cargo Test is a voluntary test in which participants agree to submit export manifest data electronically at least 2 hours prior to loading of the cargo onto the rail car in preparation for departure from the United States or, for empty rail cars, upon assembly of the train. CBP regulations do not require carriers to submit a manifest for export rail shipments. This notice provides a description of the test, sets forth eligibility requirements for participation, and invites public comment on any aspect of the test.

DATES: The test will begin no earlier than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**] and will run for approximately two years. CBP is accepting applications for participation in this planned test until CBP has received applications from nine parties that meet all test participant requirements.

Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

ADDRESSES: Applications to participate in the ACE Export Manifest for Rail Cargo Test must be submitted via email to CBP Rail Export Manifest at cbprailexportmanifest@cbp.dhs.gov. In the subject line of the email, please use “ACE Export Manifest for Rail Cargo Test Application”. Written comments concerning program, policy, and technical issues may also be submitted via email to CBP Rail Export Manifest at cbprailexportmanifest@cbp.dhs.gov. In the subject line of the email, please use “Comment on ACE Export Manifest for Rail Cargo Test”.

FOR FURTHER INFORMATION CONTACT: Vincent C. Huang, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, via email at cbprailexportmanifest@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, Dec. 8, 1993) (Customs Modernization Act) (19 U.S.C. 1411-14). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade,

ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS or paper function, or to create a new function. Each release begins with a test and ends with mandatory use of the new ACE feature, thus retiring the legacy ACS or paper function as applicable. Each release builds on previous releases and sets the foundation for subsequent releases.

Authorization for the Test

The Customs Modernization Act provides the Commissioner of CBP with the authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to the Customs Modernization Act and section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. As provided in 19 CFR 101.9(b), for purposes of conducting an NCAP test, the Commissioner of CBP may impose requirements different from those specified in the CBP regulations.

International Trade Data System (ITDS)

This test is also in furtherance of the International Trade Data System (ITDS) key initiatives, set forth in section 405 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347, 120 Stat. 1884, Oct. 13, 2006) (SAFE Port Act) (19 U.S.C.

1411(d)) and Executive Order 13659 of February 19, 2014, Streamlining the Export/Import Process for America's Businesses. The purpose of ITDS, as stated in section 405 of the SAFE Port Act, is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. CBP is developing ACE as the "single window" for the trade community to comply with the ITDS requirement established by the SAFE Port Act.

Executive Order 13659 requires that by December 2016, ACE, as the ITDS single window, have the operational capabilities to serve as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export, and to transition from paper-based requirements and procedures to faster and more cost-effective electronic submissions to, and communications with, U.S. government agencies.

Current Rail Cargo Export Information Requirements

Under existing regulations, rail carriers are not required to submit a paper or electronic manifest for cargo exported from the United States by rail. However, as discussed below, under 19 CFR 192.14, the U.S. Principal Party in Interest (USPPI) is

required to submit certain advance information to CBP for export cargo leaving the United States by rail.¹

Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 2071 note), required CBP to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). The required cargo information is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP. Section 192.14 of title 19 of the Code of Federal Regulations (19 CFR 192.14) implements the requirements of the Trade Act with regard to cargo departing the United States.

Under 19 CFR 192.14, the USPPI must file any required Electronic Export Information (EEI) for the cargo on the train in the Automated Export System (AES). The USPPI or its authorized agent must transmit and verify system acceptance of this EEI, generally no later than 2 hours prior to the arrival of the train at the border. The rail carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related EEI filing citation, covering all cargo for which the EEI is required, or exemption legends, covering cargo for which EEI need not be filed. While the rail carrier is not required to submit a rail cargo export manifest to CBP, the outbound rail carrier must annotate the carrier's outward manifest, waybill, or other export documentation

¹ The USPPI is defined in the Bureau of the Census Foreign Trade Regulations (FTR) as the person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export. 15 CFR 30.1.

with the applicable AES proof of filing, post departure, downtime, exclusion or exemption citations, conforming to the approved data formats found in the Bureau of the Census Foreign Trade Regulations (FTR) (See 15 CFR part 30).

Description of the ACE Export Manifest for Rail Cargo Test

Purpose

The ACE Export Manifest for Rail Cargo Test will test the feasibility of requiring rail carriers to file export manifest data. In addition, the ACE Export Manifest for Rail Cargo Test will test the functionality regarding the filing of export manifest data for rail cargo electronically to ACE in furtherance of the ITDS initiatives described above. CBP has re-engineered AES to move it to an ACE system platform. The re-engineering and incorporation of AES into ACE will result in the creation of a single automated export processing platform for certain export manifest, commodity, licensing, export control, and export targeting transactions. This will reduce costs for CBP, partner government agencies, and the trade community, and improve facilitation of export shipments through the supply chain.

The ACE Export Manifest for Rail Cargo Test will also test the feasibility of requiring the rail carrier to submit manifest information electronically in ACE generally within a specified time before the cargo is loaded on the train. As described in the paragraph below, in the test, participants will submit export manifest data electronically to ACE at least 2 hours prior to loading of the cargo or, for empty rail cars, upon assembly of the train. This timeframe will also enable CBP to link the EEI submitted by the USPPI with the export manifest information. This capability will better enable CBP

to assess risk and effectively target and inspect shipments prior to the loading of cargo to ensure compliance with all U.S. export laws.

Procedures

Participants in the ACE Export Manifest for Rail Cargo Test agree to provide export manifest data electronically at least 2 hours prior to loading of the cargo onto the train in preparation for departure from the United States or, for empty rail cars, upon assembly of the train. The ACE Export Manifest data submission will be used to target high-risk rail cargo. CBP expects that test participants will have access to the manifest data early in the planning stages of an export rail cargo transaction and will be able to comply with these timeframes. CBP anticipates that these timeframes will provide CBP adequate time to perform proper risk assessment and identification of shipments to be inspected early enough in the supply chain to enhance security while minimizing disruption to the flow of goods. Although CBP will aim to identify shipments for inspection prior to loading, inspections could potentially happen at any time before the train departs the United States.

Any rail cargo identified as potentially high-risk will receive a hold until required additional information related to the shipment is submitted to clarify non-descriptive, inaccurate, or insufficient information, a physical inspection is performed, or some other appropriate action is taken, as specified by CBP. Once the cargo is cleared for loading, a release message will be generated and transmitted to the filer.

Data Elements

The ACE Export Manifest for Rail Cargo Test data elements are mandatory unless otherwise indicated. Data elements that are indicated as “conditional” must be

transmitted to CBP only if the particular information pertains to the shipment or cargo.

The ACE Export Manifest for Rail Cargo data elements are to be submitted at the lowest bill level. The data elements for all shipments, including empty rail cars, consist of:

- 1) Mode of Transportation (Rail, containerized or Rail, non-containerized)
- 2) Port of Departure from the United States
- 3) Date of Departure
- 4) Manifest Number
- 5) Train Number
- 6) Rail Car Order
- 7) Car Locator Message
- 8) Hazmat Indicator (Yes/No)
- 9) 6-character Hazmat Code (conditional) (If the hazmat indicator is yes, then UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided.)
- 10) Marks and Numbers
- 11) SCAC (Standard Carrier Alpha Code) for exporting carrier
- 12) Shipper name and address (For empty rail cars, the shipper may be the railroad from whom the rail carrier received the empty rail car to transport.)
- 13) Consignee name and address (For empty rail cars, the consignee may be the railroad to whom the rail carrier is transporting the empty rail car.)
- 14) Place where the rail carrier takes possession of the cargo shipment or empty rail car

- 15) Port of Unlading
- 16) Country of Ultimate Destination
- 17) Equipment Type Code
- 18) Container Number(s) (for containerized shipments) or Rail Car Number(s)
(for all other shipments)
- 19) Empty Indicator (Yes/No)

If the empty indicator is no, then the following data elements must also be provided, as applicable:

- 20) Bill Of Lading Numbers (Master and House)
- 21) Bill of Lading type (Master, House, Simple or Sub)
- 22) Number of house bills of lading
- 23) Notify Party name and address (conditional)
- 24) AES Internal Transaction Number or AES Exemption Statement (per shipment)
- 25) Cargo Description
- 26) Weight of Cargo (may be expressed in either pounds or kilograms)
- 27) Quantity of Cargo and Unit of Measure
- 28) Seal Number
- 29) Split Shipment Indicator (Yes/No)
- 30) Portion of split shipment (e.g. 1 of 10, 4 of 10, 5 of 10 – Final. etc.)
(conditional)
- 31) In-bond number (conditional)

32) Mexican Pedimento Number (only for shipments for export to Mexico)
(conditional)

There are currently no additional data elements identified for other participating U.S. Government Agencies (PGAs) for the ACE Export Manifest for Rail Cargo Test. However, CBP may enhance the test in the future with additional data or processing capabilities to assist with facilitation of rail shipment movements and to be consistent with Executive Order 13659. Any such enhancement will be announced in the **Federal Register**.

Eligibility Requirements

CBP is limiting this test to nine rail carriers. There are no restrictions with regard to organization size, location, or commodity type. However, participation is limited to those parties who are able to electronically transmit export manifest data in the identified acceptable format. Prospective ACE Export Manifest for Rail Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Cargo-ANSI X12 or Unified XML, and must successfully complete certification testing with their client representative. (Unified XML may not be immediately available at the start of the test. However, participants wishing to utilize Unified XML may be accepted, pending its development and implementation). Once parties have applied to participate, they must complete a test phase to determine if the data transmission is in the required readable format. Applicants will be notified once they have successfully completed testing and are permitted to participate fully in the test. In selecting participants, CBP will take into consideration the order in which the applications are received.

Conditions of Participation

Test participants agree to submit export manifest data electronically to CBP via an approved EDI at least 2 hours prior to the loading of the cargo onto the rail car in preparation for departure from the United States, or, for empty rail cars, upon assembly of the train. In addition, test participants agree to establish operational security protocols that correspond to CBP hold messages that mandate the participant to take responsive action and respond to CBP confirming that the requested action was taken to mitigate any threat identified, respond promptly with complete and accurate information when contacted by CBP with questions regarding the data submitted, and comply with any Do Not Load instructions.

Finally, test participants agree to participate in any teleconferences or meetings established by CBP, when necessary, to ensure any challenges, or operational or technical issues regarding the test are properly communicated and addressed.

Participation in the ACE Export Manifest for Rail Cargo Test does not impose any legally binding obligations on either CBP or the participant, and CBP generally does not intend to enforce or levy punitive measures if test participants are non-compliant with these conditions of participation during the test.

Application Process and Acceptance

Those interested in participating in the ACE Export Manifest for Rail Cargo Test should submit an email to CBP Rail Export Manifest at cbprailexportmanifest@cbp.dhs.gov, stating their interest and their qualifications based on the above eligibility requirements. The email will serve as an electronic signature of intent to participate and must also include a point of contact name and telephone number.

Applications will be accepted until CBP has received applications from nine parties that meet all test participant requirements. CBP will notify applicants whether they have been selected to participate in the test. Applicants will also be notified once they have successfully completed testing and are permitted to participate fully in the test.

Test participants will receive technical, operational, and policy guidance through all stages of test participation, from planning to implementation, on the necessary steps for the transmission of electronic export manifest data.

Costs to ACE Export Manifest for Rail Cargo Test Participants

ACE Export Manifest for Rail Cargo Test participants are responsible for all costs incurred as a result of their participation in the test and such costs will vary, depending on their pre-existing infrastructures.

Benefits to ACE Export Manifest for Rail Cargo Test Participants

While the benefits to ACE Export Manifest for Rail Cargo Test participants will vary, several advantages of joining may include:

- Reduction in costs associated with fewer examinations required after cargo is already loaded on the rail car;
- Reduction in delays and associated costs as a result of fewer trains being stopped for inspection at the borders or less cargo being returned to CBP custody for inspection once the cargo has departed the United States;
- More real time accurate transportation data, such as date and port of export, when linked to the AES EEI filing, thereby potentially reducing the likelihood of penalties (issued to exporters and/or carriers) pursuant to 15 CFR part 30 for incorrect information;

- Increases in security by leveraging CBP threat model and other data to employ a risk-based approach to improve rail cargo security and to ensure compliance with U.S. export laws, rules and regulations through targeted screening;
- The ability to provide input into CBP efforts to establish, test, and refine the interface between government and industry communication systems for the implementation of the electronic export manifest system;
- Facilitation of corporate preparedness for future mandatory implementation of electronic export manifest submission requirements; and
- Facilitation of the movement of legitimate cargo being transported by rail across U.S. borders with Canada and Mexico.

Regulatory and Statutory Requirements

Participation in the ACE Export Manifest for Rail Cargo Test does not alter the participant's obligations to comply with any other applicable statutory and regulatory requirements and participants will still be subject to applicable penalties for non-compliance. In addition, submission of data under the test does not exempt the participant from any CBP or other U.S. Government agency program requirements or any statutory sanctions in the event that a violation of U.S. export laws or prohibited articles are discovered within a shipment/container presented for export destined from the United States on a train owned and/or operated by the participant.

Duration and Evaluation of the ACE Export Manifest for Rail Cargo Test

The test will be activated on a case-by-case basis with each participant and may be limited to a single or small number of ports until any operational, training, or technical issues on either the trade or government side are established and/or resolved. The test

will run for approximately two years from [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. While the test is ongoing, CBP will evaluate the results and determine whether the test will be extended, expanded to include additional participants, or otherwise modified. CBP will announce any such modifications by notice in the **Federal Register**. When sufficient test analysis and evaluation has been conducted, CBP intends to begin rulemaking to require the submission of electronic export manifest data before the cargo is loaded onto the train for all international shipments destined from the United States. The results of the test will help determine the relevant data elements, the time frame within which data should be submitted to permit CBP to effectively target, identify, and mitigate any risk with the least impact practicable on trade operations, and any other related procedures and policies.

Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. However, participation in this or any ACE test is not confidential and upon a written Freedom of Information Act (FOIA) request, the name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

Misconduct Under the Test

If a test participant fails to abide by the rules, procedures, or terms and conditions of this and all other applicable **Federal Register** Notices, fails to exercise reasonable care in the execution of participant obligations, or otherwise fails to comply with all applicable laws and regulations, then the participant may be suspended from participation

in this test and/or subjected to penalties, liquidated damages, and/or other administrative or judicial sanction. Additionally, CBP has the right to suspend a test participant based on a determination that an unacceptable compliance risk exists.

If CBP determines that a suspension is warranted, CBP will notify the participant of this decision, the facts or conduct warranting suspension, and the date when the suspension will be effective. In the case of willful misconduct, or where public health interests or safety are concerned, the suspension may be effective immediately. This decision may be appealed in writing to the Assistant Commissioner, Office of Field Operations, within 15 days of notification. The appeal should address the facts or conduct charges contained in the notice and state how the participant has or will achieve compliance. CBP will notify the participant within 30 days of receipt of an appeal whether the appeal is granted. If the participant has already been suspended, CBP will notify the participant when their participation in the test will be reinstated.

Paperwork Reduction Act

As noted above, CBP will be accepting no more than nine participants in the ACE Export Manifest for Rail Cargo Test. This means that fewer than ten persons will be subject to any information collections under this test. Accordingly, collections of information within this notice are exempted from the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3502 and 3507).

DATE: September 3, 2015

Todd C. Owen
Assistant Commissioner
Office of Field Operations
[FR Doc. 2015-22671 Filed:
9/8/2015 08:45 am; Publication
Date: 9/9/2015]